

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

STATE OF MISSISSIPPI;
STATE OF ALABAMA;
STATE OF ARKANSAS; COMMONWEALTH OF
KENTUCKY; STATE OF
LOUISIANA; STATE OF MISSOURI;
and STATE OF MONTANA,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Secretary of Health and
Human Services; THE UNITED
STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
CHIQUITA BROOKS-LASURE, in her
official capacity as Administrator of the
Centers for Medicare and Medicaid
Services; THE CENTERS FOR
MEDICARE AND MEDICAID
SERVICES; THE UNITED STATES
OF AMERICA,

Defendants.

No. 1:22-cv-113-HSO-RPM

DECLARATION OF BENARD SIMELTON

I, Benard Simelton, declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge, and if called as a witness, I could and would competently testify to the following matters under oath.
2. I am the President of the Alabama State Conference of the National Association for the Advancement of Colored People ("Alabama NAACP"), a proposed intervenor in the above-captioned matter. The Alabama NAACP is a nonpartisan, nonprofit organization that is an affiliate of the NAACP.

3. I am authorized to provide this declaration on behalf of the Alabama NAACP. I have held the position of President of the Alabama NAACP for around 13 years. As President, I interact with Alabama NAACP members, and regularly work with the NAACP units (branches, chapters, and committees) that are responsible for carrying out the mission of the organization. Before that, I served as the Limestone County NAACP Branch President for around six years. I have also served as the First Vice Chair and the Education Chair, as well as a general member volunteer. Moreover, when I lived in New Mexico, I was a general member of the New Mexico State Conference of the NAACP.
4. The Alabama NAACP shares the mission of the NAACP, which is to “achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color.”¹ The Alabama NAACP strives to implement this mission on the local and state level by advancing a variety of social issues, including education, economic opportunity, and health.² We have a Health Committee, which is led by our Health Chair, Brenda Debose.
5. We have thousands of members throughout the state, with more than 40 active units across Alabama. The Alabama NAACP’s membership consists largely of African Americans, and it aims to support all people of color and members of underrepresented and vulnerable populations, regardless of membership in the Alabama NAACP. Currently, many of our members are eligible for Medicare and/or are Medicare beneficiaries.
6. Eliminating racial health disparities is a vital component of the Alabama NAACP’s mission to achieve equity and eliminate discrimination. The 2021 final rule by the Center for

¹ NAACP, *Our Mission*, <https://naacp.org/about/mission-vision> (last visited May 10, 2023).

² The Alabama NAACP, *Our Mission*, <https://alnaacp.org/about> (last visited May 10, 2023).

Medicare & Medicaid Services (“CMS”), which incentivizes Medicare providers to create and implement anti-racism plans (“anti-racism rule”), would work to diminish these disparities by encouraging medical providers to address some of the many factors that contribute to racial health disparities. The Alabama NAACP has strong interests in defending the anti-racism rule because it would likely decrease our members’ distrust of the medical system, increase the quality of care offered by medical providers to our members, and help our partnerships with local medical providers.

7. First, the Alabama NAACP has an interest in defending the anti-racism rule because the rule will likely reduce our members’ distrust of the medical system. This distrust impedes our members’ ability and willingness to access routine medical care.
8. Many of our members express concern about medical racism because of the Tuskegee syphilis experiment, which was conducted in Macon County, Alabama. During the Tuskegee experiment, the government recruited hundreds of Black men as participants for the syphilis study. However, even though penicillin became the recommended treatment for syphilis partway through the study, the health workers, researchers, and physicians intentionally withheld penicillin treatment from the Black participants for decades, stopping only when a whistleblower exposed the study. The decision to withhold treatment caused hundreds of the Black participants to die, go blind, and experience other severe health problems, as well as caused the wives and children to get infected.
9. When the COVID-19 vaccines were approved, many of our members feared that medical providers were again providing incomplete or inaccurate information to the Black community about the vaccine’s efficacy. Others worried that Black communities, like the Tuskegee participants, would be deprived access to life-saving treatments. Lastly, our

members expressed that oftentimes, medications are not tested enough on Black individuals, and so Black individuals can often show adverse reactions to medications. The Alabama NAACP has worked for years to help rectify this distrust. During the COVID-19 pandemic, for example, we held community talks and trainings for our members about the COVID-19 vaccine. We educated the community about the vaccines and provided information about the safety of the vaccines and vaccine access. We also held discussion panels where Black medical providers could speak directly to our members to answer any questions or concerns.

10. The anti-racism rule would help build trust between our members and medical providers throughout Alabama by incentivizing health care providers to create and implement anti-racism plans. By creating and implementing anti-racism plans, medical providers would demonstrate an interest in developing cultural competency and providing equitable care. The Alabama NAACP members are more likely to engage in routine, preventative care when they trust their medical providers.
11. Furthermore, the existence of the rule itself that incentivizes providers to engage in anti-racism efforts would inherently improve the level of trust that our members have in the medical system because it is an action step forward. While we appreciate government officials' acknowledgements of past government responsibility for increasing distrust in the medical profession, acknowledgements are only the very first step to fixing the problem. Establishing this rule is an important action step forward because it incentivizes members of the medical profession to recognize and overcome the hesitancy and suspicion that persists among some of our members. This rule would likely help more of our members

to seek medical care when needed, instead of avoiding routine medical care like vaccinations.

12. Second, the Alabama NAACP has an interest in defending the anti-racism rule as part of its broader interest in expanding access to affordable, quality healthcare for its members. For example, the Alabama NAACP has for years advocated for Medicaid expansion in Alabama, which would benefit many thousands of lower-wage earners who currently lack access to medical insurance.
13. Third, the Alabama NAACP has an interest in improving health outcomes for its members through efforts to eradicate discrimination in health care. Some members have shared that they avoid medical treatment for several reasons, including distrust of the medical field due to past experiences of mistreatment, lack of knowledge over whether they are eligible for Medicare or Medicaid, having a health insurance plan that has large gaps in coverage or high out-of-pocket costs, or concerns over being able to pay the medical bills. For example, several people have told me that they did not receive proper medical attention and think it was because of their race. People's health conditions worsen when they avoid getting the medical care they need. By contrast, providers with greater awareness of racial health disparities and their underlying causes, would likely provide better care for all people.
14. The Alabama NAACP has worked to identify and eliminate discrimination in Alabama's healthcare system for many years. We work with our members to investigate their legal redress complaints. We also try to work with health facilities whose physicians have been accused of discrimination, but policies and regulations surrounding patient privacy often limit our efforts.

15. Reducing racial discrimination and insensitivity in the medical profession would likely improve the quality of care that some of our members receive. The Alabama NAACP members have expressed that they would be interested in receiving medical care from a provider who has an anti-racism plan in place—they would be hopeful that the provider would be fair to them.
16. Fourth, the Alabama NAACP has an interest in defending the anti-racism rule because combatting racism and discrimination is at the core of our mission. Our activities seek to reduce racial disparities and combat discrimination. For example, we recently called on an Alabama Council member to resign after he used the phrase “house n-----” during a council meeting, and we stated unequivocally that we believe “there is no place for racist white supremacists to hold office and conduct business in our public meeting spaces.”³
17. If the Court agrees with Alabama’s position in this case that anti-racism plans are “bad medicine,” it will remove an incentive for healthcare providers to create anti-racism plans and may cause some healthcare providers to be hesitant about associating with the type of anti-racism efforts that the Alabama NAACP undertakes. The Alabama NAACP has an interest in preserving and expanding our connections to medical partners, especially given the importance of our partnerships with medical providers during the COVID-19 vaccine trainings and community discussions.
18. Overall, this anti-racism rule supports the Alabama NAACP’s mission, our Health Committee efforts, and many of our members.

³ Elisha Fieldstadt, *Alabama Lawmaker Uses Racist Slur in Recorded Council Meeting, Faces Calls to Resign*, NBC News, <https://www.nbcnews.com/news/us-news/alabama-lawmaker-uses-racist-slur-recorded-council-meeting-faces-calls-n1274603> (last visited May 10, 2023).

I solemnly swear and affirm under the penalties of perjury that the foregoing is true and correct based on my personal knowledge.

/s/ Benard Simelton
Declarant's Signature

5/11/2023
Date

Benard Simelton
Declarant's Printed Name